

Exhibit 4

6/29/2018 – Transcript of the Contempt Hearing
Where the City disclosed un-redacted copies of the records
deemed non-exempt on 5/3/18.

Rudd v. Norton Shores Michigan FOIA Litigation
17-004334-CZ 14th Circuit Court, Hon. Timothy G. Hicks

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DANIEL RUDD,

Plaintiff,

File No. 17-004334-CZ

vs.

MOTION

CITY OF NORTON SHORES,

Defendant.

R E C O R D

of the proceedings had in the above-entitled
cause on the 29th day of June, 2018, before
HON. TIMOTHY G. HICKS, Circuit Judge.

APPEARANCES:

The Plaintiff appeared in person,
but was not represented by counsel;

LISA A. HALL, J.D. (P70200)
Attorney at Law
on behalf of the Defendant.

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WITNESS:

PAGE

None

EXHIBITS:

PAGE

None

Friday, June 29, 2018

At 1:37:14 P.M..

Muskegon, Michigan

R E C O R D

THE COURT: File Number 17-4334-CZ, Daniel Rudd versus the City of Norton Shores. Mr. Rudd, as always, represents himself. Ms. Hall represents the City and Chief Gale sits next to her.

We're dealing with the Plaintiff's motion for an order finding the City in contempt of the Court's previous order. Mr. Rudd, go ahead.

MR. DANIEL RUDD: Thank you, Your Honor.

THE COURT: Let me ask -- Ms. Hall, let me ask you this. You aren't prepared just to hand over non-redacted pages right now, are you, to obviate this -- these proceedings?

Let me say this to you. My May 3 order essentially conceded that some work remained to be done, and so you then duly submitted to me a good index and well-organized exhibits.

MS. HALL: I did my best. Thank you. It took awhile, but I --

THE COURT: Well, I've -- I've pretty much gone through it.

MS. HALL: Okay.

1 THE COURT: And so I think for 653 pages
2 contained in these notebooks, the City is in pretty
3 good shape. All right? I guess the math is a little
4 bit off because I think that you had the non-redacted
5 46 pages --

6 MS. HALL: I did.

7 THE COURT: -- or so in here.

8 MS. HALL: I might even have both --

9 THE COURT: Yeah.

10 MS. HALL: -- 'cause I --

11 THE COURT: And that was perfect.

12 MS. HALL: Yep.

13 THE COURT: That's what I want you to do.
14 But I'm saying when I say 653 then there's a little
15 bit of overlap.

16 So these contempt proceedings concerned 36
17 pages.

18 MS. HALL: Yep.

19 THE COURT: Okay.

20 MS. HALL: And I've got -- Yes. Yep.
21 Your Honor, if I may, and I can -- it's really my --
22 in my response, the order that was issued by the
23 Court wasn't very clear, would it be redacted or
24 unredacted copies of these complaints that we had to
25 turn over.

1 THE COURT: Well, we'll talk about that in
2 a minute. But I'm saying as you walk in here today,
3 you're unwilling to just hand over to Mr. Rudd
4 non-redacted copies?

5 MS. HALL: If the Court would like to
6 clarify its order and say they have to be unredacted
7 --

8 THE COURT: They do.

9 MS. HALL: -- I do have them here today.

10 THE COURT: They do.

11 MS. HALL: I do have them here today, Your
12 Honor.

13 THE COURT: All right.

14 MS. HALL: And I'm willing and ready, if
15 that's what the Court orders, then that is what we
16 are willing to comply with. We are not --

17 THE COURT: Would you please --

18 MS. HALL: -- looking to defy a court
19 order by any means. And so in my response, Your
20 Honor, not to be too -- And I should be standing. I
21 apologize.

22 Not to be too --

23 THE COURT: Obtuse?

24 MS. HALL: Yeah, I guess. But, Your
25 Honor, Mr. Rudd time and time again when we were here

1 said: All I'm looking for is the basic nature of the
2 complaint. I don't need the names. And so --

3 THE COURT: Ms. Hall --

4 MS. HALL: Yes.

5 THE COURT: -- if you're willing to -- If
6 you need to consult with the Chief, go ahead.

7 MS. HALL: Yes.

8 THE COURT: If you're willing to take that
9 envelope and give it to Mr. Rudd, I think we're
10 probably done here today.

11 MS. HALL: Okay. Your Honor --

12 THE COURT: You want to speak to him for a
13 minute before we do that?

14 MS. HALL: Do you -- do you want to talk?

15 THE COURT: I mean, you guys should -- If
16 you want to talk --

17 MS. HALL: Yes, let's -- let's just go out
18 --

19 THE COURT: -- you should -- you should
20 move away.

21 MS. HALL: -- just go out in the hall for
22 just a minute.

23 THE COURT: You can go in the jury room,
24 if you want to.

25 MS. HALL: Okay.

1 THE COURT: That's available.

2 (Whereupon, proceedings recessed
3 at 1:38:55 P.M.; proceeding
4 resumed at 1:42:03 P.M..)

5 THE COURT: Okay.

6 MS. HALL: Your Honor, I had a chance to
7 talk to the Chief and it's the position, if the Court
8 orders them, we are willing to do so. Because the
9 order wasn't clear -- And I don't know if obtuse is
10 the right word. It's just it didn't clarify were
11 they redacted or unredacted. And because Mr. Rudd
12 indicated he didn't need the names, we were
13 protecting the citizens' privacy and the officers'
14 privacy information.

15 And as mister -- as the Chief indicated to
16 me in the jury room, he's got many contracts that are
17 in issue. So if we get an order from the Court, Your
18 Honor, saying they need to be unredacted with their
19 personal information, I am willing, ready and able to
20 turn that 36 pages over today.

21 THE COURT: Well --

22 MS. HALL: I did bring that.

23 THE COURT: Yeah. The 36 pages are
24 exactly as they were presented to the City. I
25 thought you said something about redacted, 30 seconds

1 ago.

2 MS. HALL: Oh, I apologize. I have
3 unredacted ones with their -- people's personal
4 information.

5 THE COURT: Okay. So they're -- quote:
6 Clean ones?

7 MS. HALL: They're clean, with the
8 exception of those portions where there's some
9 investigation that started on the bottom, as I
10 addressed in my response brief.

11 THE COURT: Well, wait a minute. So the
12 -- the non-redacted copies you have today are still
13 redacted?

14 MS. HALL: Well, the portion -- Not with
15 the names or the officers' names being redacted, but
16 a -- You know how in my index I indicated how -- and
17 in my response, the initial complaint sometimes start
18 investigations on the same page. And so that's why
19 on just like two or three of them, in my response, I
20 address the Court, those were investigation portions
21 that I redacted that --

22 THE COURT: May I see the ones that you're
23 preparing to deliver?

24 MS. HALL: Absolutely, Your Honor. I have
25 them right here (indicating). They're marked with

1 (indicating) --

2 (Whereupon, proceedings recessed
3 at 1:43:45 P.M.; proceedings
4 resumed at 1:46:29.)

5 THE COURT: Mr. Rudd?

6 MR. DANIEL RUDD: Thank you, Your Honor.

7 I would -- I would first disagree with Ms. Hall's
8 assertion that statements that were part of arguments
9 designating, you know, the goal of this inquiry is to
10 find the nature. Those statements also included to
11 find out how these were dealt with, how they were
12 resolved, to -- it was -- it was a larger scope than
13 that. And on a bird's-eye view level, it's -- it
14 doesn't make a lot of sense to suggest that arguments
15 made during the course of a proceeding will somehow
16 limit the scope of the order's authority.

17 THE COURT: I perceive today's work to be
18 pretty narrow. We're trying to figure out whether
19 the City is in contempt of the Court's order. I'm
20 not too concerned about whether they were in contempt
21 of what they thought you wanted.

22 MR. DANIEL RUDD: Well, I guess that's
23 what I'm saying.

24 THE COURT: Well --

25 MR. DANIEL RUDD: Any law --

1 THE COURT: -- I agree with you.

2 MR. DANIEL RUDD: Any lawful order --

3 THE COURT: Or what you conceded during
4 oral argument. I think I -- I'm looking at my order
5 and I'm trying to figure out if the City is in
6 contempt of the order --

7 MR. DANIEL RUDD: Okay.

8 THE COURT: -- period. I think that's the
9 narrow issue we have today.

10 MR. DANIEL RUDD: I would say that it --
11 that the City is absolutely wrong to say that the
12 opinion and final order is silent as to further
13 redactions on the complaints against the City. And
14 it also says that the Court made a decision about a
15 class of records but didn't say anything about
16 whether or not there was exemptible material in
17 there, and now they're raising the privacy exemption,
18 which is the one that requires a showing of clearly
19 unwarranted invasion of privacy. A heavy burden to
20 meet, one that's rarely been met on disclosing names,
21 even names of people in these same circumstances.

22 There's lots of case law on that, but the
23 point of the matter is it's ridiculous to suggest
24 that you can litigate a FOIA suit, ask the court
25 several times for summary disposition, advise the

1 court several times that, yes, this is ripe for a
2 decision, receive a detailed opinion which reflects a
3 thorough in-camera review of each and every document,
4 then give specific findings. And in this case, the
5 specific nature of the findings referencing specific
6 content saying, "I'm not convinced that these harms
7 will occur", saying, "these are not exempt records",
8 that settles the question. So definitely in
9 contempt.

10 And the ridiculous result that would occur
11 if this type of thing could happen is you can go
12 through all those steps of litigation, challenge a
13 disclosure order all the way up to the Supreme Court
14 with emergency motions and the whole shebang.

15 THE COURT: Which the City did here.

16 MR. DANIEL RUDD: Which the City did here.
17 The Supreme Court did not -- The -- the Supreme
18 Court indicated that the process followed by the
19 Court here and the findings didn't require any
20 further review. And I would say the Court afforded
21 those records the maximum level that ever gets put
22 into a FOIA determination. It's a bulletproof
23 opinion that's already been vetted by the Supreme
24 Court.

25 So to say that they can come back down and

1 be like, well, okay, that settles that, now let's
2 peel back another layer and we'll do another round of
3 exemptions on a more narrow point, well, they should
4 have claimed the narrow exemptions from the
5 beginning.

6 There's kind of an issue -- preclusion
7 issue here, too, where they failed to raise these
8 issues, the privacy exemption, in the trial court,
9 they failed to raise it in the appellate court. And
10 ordinarily, raise or waive would preclude that. But
11 on FOIA determinations, sometimes different
12 exemptions are considered in the appellate courts.
13 That didn't occur.

14 So to come back now and say, okay, we're
15 going to unilaterally do another round, it -- the
16 City has no -- Once this Court has completed the
17 process which is set forth by the statute, the City
18 is relieved of that custodial function that they were
19 entrusted to on a temporary basis to make initial
20 determinations, but then the -- the statute has a
21 process. The process ran its course. The records
22 were deemed exempt. The Court did carve out
23 exemption -- what could be redacted or separated.
24 The Court made carve outs and even used singular
25 language. I'm going to do one -- one -- I'm going

1 to carve out one class of records is what the order
2 said.

3 So I don't remember the Latin word for
4 this, but it's like the -- the specific --

5 THE COURT: If the Court mentioned if
6 something presumes the exclusion of other stuff.

7 MR. DANIEL RUDD: Yeah, the specific
8 mention of it. So it -- it would open up just a huge
9 door to mischief if a public body could delay
10 disclosure of a record for 18 months, go through the
11 whole process, do the whole thing. Most people
12 aren't going to even be able to hang in litigation
13 like this. I could never afford to have a lawyer do
14 it. So that would really defy the purpose of the
15 FOIA, which is that the citizens participate in
16 government. That needs to be timely.

17 THE COURT: Thank you.

18 MR. DANIEL RUDD: Thank you, Your Honor.

19 THE COURT: Ms. Hall?

20 MS. HALL: Thank you, Your Honor. As
21 discussed in my response brief to the Order to Show
22 Cause as to why the City shouldn't be in contempt,
23 Your Honor, the order is silent in terms of how the
24 citizen complaints should be turned over in a
25 redacted or unredacted form. When we spoke at length

1 during these hearings, and it's mentioned in Chief
2 Gale's affidavit, Your Honor, that even turning over
3 the unredacted copies would have the chilling effect.
4 And it's -- it's started already.

5 THE COURT: The Court rejected -- This
6 Court rejected that position. Right?

7 MS. HALL: The Court rejected that -- that
8 turning over the citizen complaints, the category of
9 these documents, Your Honor, but not necessarily that
10 inside that citizen complaint there --

11 THE COURT: And the Court of Appeals --

12 MS. HALL: -- could be private information.

13 THE COURT: I understand the appeal is
14 still pending, but the Court of Appeals denied leave.
15 Right?

16 MS. HALL: For the state --

17 THE COURT: And --

18 MS. HALL: -- to turn over.

19 THE COURT: And that issue was raised with
20 the Court of Appeals?

21 MS. HALL: Not specifically --

22 THE COURT: Chief Gale's affidavit was
23 mentioned in the Court of Appeals, wasn't it?

24 MS. HALL: It did get brought.

25 THE COURT: All right. And the Supreme

1 Court denied leave. Correct?

2 MS. HALL: Yes.

3 THE COURT: And you're -- you would agree
4 that the urgency for the appellate review was to
5 prevent the loss of confidentiality?

6 MS. HALL: Yes, Your Honor.

7 THE COURT: And once the confidentiality
8 is lost, it cannot be regained.

9 MS. HALL: And it's already been --
10 Confidentiality has already been lost with the
11 redacted complaints. He's already been contacting
12 people.

13 THE COURT: Your position is that because
14 the Court didn't forbid redaction, you can do it?

15 MS. HALL: Yes, Your Honor.

16 THE COURT: But the Court's order didn't
17 forbid you from submitting complaints in Greek, did
18 it?

19 MS. HALL: No.

20 THE COURT: Or in code?

21 MS. HALL: No, it -- it --

22 THE COURT: My point is that we could be
23 doing this for the next three years because every
24 time the Court orders the City to do something, you
25 could come back and say: Well, you didn't forbid us

1 from punctuating it in such a way. You didn't forbid
2 us from printing it on black paper. Correct?

3 MS. HALL: Your Honor, I think that that's
4 not --

5 THE COURT: You think the Court -- The
6 Court's order said to provide Rudd with the initial
7 complaints filed against Norton Shores.

8 MS. HALL: The Court --

9 THE COURT: What is ambiguous about that?

10 MS. HALL: It just meant that category of
11 documents, Your Honor. Our position is that --

12 THE COURT: Yes, the documents.

13 MS. HALL: -- it was exempt. The category
14 of documents were no -- not exempt under the personal
15 law enforcement agency record exemption. And so
16 that's what the holding was. You did the balancing
17 test, you said it doesn't fall under that exemption,
18 so we turned the citizen complaints over.

19 THE COURT: No. You turn over all citizen
20 complaints.

21 MS. HALL: Well, Mr. Rudd indicated he
22 didn't need the names.

23 THE COURT: But we're not here complying
24 with what Mr. Rudd seeks, are we?

25 MS. HALL: Well, that was all --

1 THE COURT: We're here to figure out
2 whether you complied with the court order.

3 MS. HALL: But my understanding was, Your
4 Honor, is we had these hearings. The order was
5 considering the testimony in terms of what Mr. Rudd
6 needed. I mean, the Court went to great lengths
7 asking him: What are you looking for? How would my
8 order look? What does the -- what does the -- What
9 do you want -- What are you thinking an order should
10 look like? What do you think the citizen complaints
11 should be? And he said in there: I don't need the
12 names, Your Honor. I'm looking for the underlying
13 nature of the complaint.

14 THE COURT: So you thought it was in the
15 City's prerogative to take the court order, to adjust
16 it stylistically to fit what Mr. Rudd said in his
17 arguments here and then to redact them in such a way
18 as to provide that result?

19 MS. HALL: Your Honor, I don't believe the
20 Court -- that order indicated we couldn't provide
21 them redacting the privacy information.

22 THE COURT: Like I said, the court order
23 didn't say you couldn't submit them in Greek, either,
24 or Spanish or French.

25 MS. HALL: That's -- that's accurate. But

1 they are what they are in the file and so, I mean,
2 there was privacy information in there. And to turn
3 over the name of a woman whose --

4 THE COURT: But those are all arguments
5 that you made to the -- to me before, didn't you?

6 MS. HALL: In redacted and unredacted
7 format. I mean, that was -- We argued were citizen
8 complaints a part of the personal law enforcement
9 records file. We argued, you know, doing the
10 balancing test both ways, redacted or unredacted,
11 Your Honor, it would -- it could have the chilling
12 effect.

13 That was -- It was never decided that the
14 privacy information could not be redacted. And I am
15 willing --

16 THE COURT: Did the City ever raise that
17 issue in the pre-order proceedings?

18 MS. HALL: Like in their response to FOIA?

19 THE COURT: Right. Right.

20 MS. HALL: I do not believe so. I was a
21 --

22 THE COURT: You got it. City never raised
23 that issue. I don't think the City ever raised the
24 issue about particular information in the citizen
25 complaints to provide a second reason for exemption.

1 MS. HALL: Well, I believe they just
2 denied it under the personal records of law -- the
3 personal records.

4 THE COURT: And I think the City
5 repeatedly told the Court that this matter was
6 positioned for summary disposition.

7 MS. HALL: Yes, Your Honor.

8 THE COURT: Didn't it? Okay.

9 MS. HALL: And I will say, Your Honor, I
10 do -- those documents that I provided you with the
11 redactions, the six that have them, so I have the
12 unredacted with you so you can see. And mister --
13 the Chief is here today. But what happened is is
14 some of those complaints are generated from a phone
15 call. And the Chief takes it down and starts typing,
16 and so then the investigating officer starts that
17 investigation right on the same page, and so that's
18 why that portion is redacted. And I indicated those
19 numbers in the response brief. We're not trying to
20 hide anything.

21 I'm here today with the unredacted copy.
22 If the Court could indicate they have to be
23 unredacted, we are willing, ready and able to give
24 those names over. But without that, the City has had
25 a lot of --

1 THE COURT: Well, you'd have -- If I
2 ordered you to do that right now, you'd have to do
3 further adjustment of the six or seven pages that
4 still contain redactions, wouldn't you?

5 MS. HALL: No, because those are
6 investigate -- that's the investigative reports that
7 you -- you said is exempted. So no, I wouldn't.
8 That's -- that's investigatory work. That's where
9 they start saying: I contacted so and so, or here's
10 the items that we're going to be reviewing. That was
11 all investigation. I have the unredacted copies with
12 you.

13 THE COURT: Your brief makes the point
14 that the Court's Order to Show Cause didn't specify
15 whether this was -- could be a criminal or civil
16 contempt. You're right. And that Mr. Rudd prepared
17 that order, presented it to the Court and it was my
18 fault for not --

19 MS. HALL: Checking (unintelligible).

20 THE COURT: (Unintelligible.)

21 MS. HALL: I --

22 THE COURT: These -- Actually, these
23 issues are more complicated than people think. If
24 you watch TV shows, you think the judge can just walk
25 in and say 30 days and that's the end of it, but it's

1 not.

2 MS. HALL: If the Court wants me to turn
3 them over unredacted, I have them here. Those ones I
4 have today here are unredacted, Your Honor. Those
5 have investigation notes on there. I don't know how
6 to separate that off. The City has never had this
7 request.

8 THE COURT: Criminal concept is designed
9 to punish past behavior, generally speaking.
10 Correct?

11 MS. HALL: Yes.

12 THE COURT: And civil contempt would be an
13 order which is designed to coerce the City to comply
14 within a certain deadline to be set probably in a few
15 days. Correct?

16 MS. HALL: Yes, Your Honor.

17 THE COURT: Okay. If the Court -- And we
18 can't get there today because there are procedures
19 that have to be articulated. But if -- if you look
20 at the criminal contempt cases, they talk about the
21 court has to advise the witness of his or her Fifth
22 Amendment rights. The court has to afford the
23 witness an opportunity to have -- to hire counsel.
24 The standard for contempt is beyond a reasonable
25 doubt. That's pretty high.

1 My question is in a -- in a setting like
2 this, who is the person to whom the court would
3 administer those rights? I mean, lots of contempt
4 proceedings involve child custody cases where dad is
5 just refusing to bring the kids back on time or --

6 MS. HALL: Yeah.

7 THE COURT: -- somebody took the kids to
8 Nebraska for the summer. So I'm saying in this kind
9 of setting, who is the condemnor -- contemptor? You?

10 MS. HALL: I --

11 THE COURT: The Chief?

12 MS. HALL: I --

13 THE COURT: Mr. Bolgren?

14 MS. HALL: I haven't had a chance --

15 THE COURT: I mean, who is the person to
16 whom I would administer those Fifth Amendment rights?

17 MS. HALL: Your Honor, I didn't know this
18 was a criminal contempt hearing so I haven't looked
19 into that.

20 THE COURT: Well, it's --

21 MS. HALL: But I can brief --

22 THE COURT: It's not. And, I mean, I
23 can't do any criminal contempt work here today and,
24 frankly, I probably can't do the civil, either. I
25 think we'd have to set up some rules and see where we

1 go from here.

2 MS. HALL: Well --

3 THE COURT: But I thought while you were
4 here, I would solicit your advice.

5 MS. HALL: And that's exactly right. I
6 don't know which type of proceeding it was and I'm
7 not sure, you know, who that would be.

8 THE COURT: You're at a disadvantage today
9 because --

10 MS. HALL: You can take me, mister --

11 THE COURT: -- the Court's order --

12 MS. HALL: You're taking me. I don't -- I
13 don't know, you know, who you would administer those
14 rights on, but we are willing, ready and able to
15 comply if the Court orders. Again, we have to
16 protect the rights of the officers, these people in
17 the complaints.

18 THE COURT: You said that a lot of times.

19 MS. HALL: But I -- but -- I know, Your
20 Honor.

21 THE COURT: And we are now beyond the
22 finish line here. We're not talking about how the
23 race should have been run. We're talking about what
24 happens after we've crossed the finish line.

25 Okay. Thank you.

1 MS. HALL: Well, Your Honor, I do want to
2 let you know I do have those documents here. Should
3 we look at -- So you can look at those.

4 THE COURT: I just looked at them, didn't
5 I?

6 MS. HALL: Well, yeah, but so you -- on
7 the ones where it was redacted, you could look at the
8 unredacted version so you can see. I'm not redacting
9 the initial complaint. I'm giving Mr. Rudd the
10 entire complaint as he is asking for.

11 THE COURT: Okay.

12 MS. HALL: Thank you, Your Honor.

13 THE COURT: Thank you, Ms. Hall. Mr.
14 Rudd, anything else?

15 MR. DANIEL RUDD: Yes, Your Honor. I
16 would -- And I'll keep it brief. I would just like
17 to note that whatever is on those initial documents,
18 that is not a personal record, it's not a Garrity
19 statement. The officers wouldn't be writing Garrity
20 statements right on the official complaint which, by
21 the way, says Official Complaint.

22 If there is any investigatory work on
23 there, it's probably the officer following up with
24 someone, asking questions. In fact, I have a few
25 that are unredacted ones and there are no Garrity

1 statements and I -- I don't think they'll testify
2 that there are.

3 Any of the documents that are contemplated
4 in the investigatory records of internal affair --
5 affair files would not be written on that same form.
6 And the -- those -- those full pages should be
7 produced.

8 THE COURT: All right. Thanks. Mr. Rudd,
9 the pages that you -- Or Ms. Hall, excuse me. The
10 pages you keep waving in front of me, are they in the
11 same order as the 37 that I have in this notebook
12 that you sent to me originally?

13 MS. HALL: It's going to depend on -- No,
14 because the six we picked, that's the first six, Your
15 Honor. It would -- So the first one --

16 THE COURT: Well, okay.

17 MS. HALL: The first one would be --

18 THE COURT: Actually --

19 MS. HALL: I mean, I can --

20 THE COURT: Well, here's what we need to
21 do.

22 MS. HALL: The first --

23 THE COURT: You -- I asked you the wrong
24 question, because the thing is you -- the things
25 you've submitted to me a couple weeks ago were all

1 redacted, so that would --

2 MS. HALL: But I had sent you a copy of
3 what I wanted you to have, what I produced to Rudd,
4 just so there's no -- you know, I'm not trying to
5 hide anything.

6 THE COURT: Well, what we need to do is
7 this. You take a minute with my staff and show me
8 where I find those 6 or 7 pages in the clean versions
9 that I have in my 600 pages.

10 MS. HALL: And if --

11 THE COURT: All right. Let me take a look
12 at those.

13 MR. DANIEL RUDD: Your -- Your Honor --

14 MS. HALL: Your Honor, if it was --

15 (Whereupon, unintelligible conversation.)

16 MS. HALL: I was just thinking in terms of
17 quickness, I could show him in those books and --

18 THE COURT: Show who?

19 MS. HALL: You know, it was -- The Chief.
20 It was investigatory work, but if it's not --

21 THE COURT: Well, I think I'm
22 understanding your point a little better. You're
23 saying that on some of those pages, we have both a
24 citizen complaint and a notation about investigatory
25 work?

1 MS. HALL: Yes.

2 THE COURT: Okay. And Mr. Rudd is saying,
3 well, that shouldn't have happened. But you're
4 saying, you know, I don't know if it should or
5 shouldn't, but maybe it did.

6 MS. HALL: It did.

7 THE COURT: In a busy day, maybe somebody
8 just kept going on the computer screen. Okay. You
9 show me --

10 MS. HALL: Okay.

11 THE COURT: -- the clean pages that match
12 the six that you have in your hand. Okay?

13 MS. HALL: Yes. I'll mark them for you in
14 --

15 THE COURT: And I'll take a look.

16 MS. HALL: -- your notebook.

17 THE COURT: Thank you.

18 (Whereupon, proceedings recessed
19 at 2:02:47 P.M.; proceedings
20 resumed at 2:27:57 P.M..)

21 THE COURT: Back to work. We're handing
22 -- Let me say this, first. I looked at the six or
23 seven pages in question. I think Ms. Hall is correct
24 as to those pages. There were some -- some
25 investigatory note made on each one of those pages.

1 The redaction is valid. Frankly, it's not that
2 important a couple of times, but it is valid and so
3 the documents, the thirty --

4 THE CLERK-BAILIFF: Six.

5 THE COURT: -- six pages that Mr. Gereaux
6 has in his hands now comply with the Court order. So
7 Ms. Hall, we're giving you back your 36 pages. Mr.
8 Rudd, we're giving you your 36 pages. And we've
9 retained an electronic copy for our records.

10 Now, what else must we do today? Mr.
11 Rudd?

12 MR. DANIEL RUDD: Thank you, Your Honor.
13 And I -- I do appreciate receiving these records.
14 The FOIA statute was updated in 2015 with stronger
15 penalties for recalcitrant public bodies who apply
16 various forms of arbitrary or capricious behaviors,
17 which could be defined in lots of ways. Public body
18 wants --

19 THE COURT: So this is a -- a basis for an
20 assessment of sanctions independent from the contempt
21 statutes?

22 MR. DANIEL RUDD: Yes. And interestingly
23 enough, the FOIA statute's sanction run right up to
24 the amount for contempt under the contempt statute.
25 And the FOIA statute also includes wording, it says:

1 Failure to comply with an order of the court may be
2 punished as contempt of court, which is kind of one
3 of those phrases like on a PPO that says so and so
4 won't beat or assault or kill somebody. Well, of
5 course they won't. That's terrible. And of course
6 everybody has to obey court orders.

7 But the FOIA includes that, I believe, not
8 for no reason. It's not surplusage. It's because
9 there needs to be a quick remedy to stop this from
10 happening.

11 Some things that I just would really love
12 to clarify, and I can do it very fast.

13 THE COURT: Let me ask you this. Now
14 maybe I missed it. Is this -- Is that issue
15 contained in your briefing for today, the FOIA
16 assessment issue?

17 MR. DANIEL RUDD: I -- Actually, I'm not
18 sure if it is.

19 THE COURT: Ms. Hall, have you seen it?

20 MS. HALL: No, Your Honor.

21 THE COURT: So I'm guessing you're not
22 prepared to discuss this issue today, are you?

23 MS. HALL: It's not in the motion, no.

24 THE COURT: Okay. I don't know that I
25 have an answer for you on that one, Mr. Rudd.

1 MR. DANIEL RUDD: Well, I --

2 THE COURT: Go ahead.

3 MR. DANIEL RUDD: I -- I think if -- If I
4 don't know it's not in the pleading, it's probably
5 not. They probably not were put on notice to get to
6 that phase. I guess what I would love is some kind
7 of finding, though. Because the way this unfolded,
8 like I was describing, it goes all the way to the
9 Supreme Court and back again, 53 days from the time
10 this disclosure order was entered until today and it
11 was -- When the records were finally disclosed after
12 all that effort, which was substantial, if there we
13 -- if there was a real attorney here, I -- I think
14 we'd be in the 30 to \$40,000 range, after all that
15 effort.

16 THE COURT: Well, we do have one real
17 attorney here.

18 MR. DANIEL RUDD: Oh.

19 THE COURT: She's for the -- She's on the
20 other side.

21 MR. DANIEL RUDD: I meant if there's a
22 real attorney here (indicating). And you're a real
23 attorney, too, Your Honor.

24 But the -- the point is once those records
25 were finally compelled to be disclosed, they came not

1 just with redactions of citizen names but with
2 redactions of officers' names and even redactions of
3 intermediary officers, like now we can't even see who
4 it was that was bringing this.

5 And I immediately brought this to the
6 attention of opposing counsel. They didn't say to
7 me: Well, we're filing an emergency motion to seek
8 clarification in court. They could have done that
9 through the whole process. So there's a public
10 policy question is why wouldn't any public body hedge
11 their bets by throwing out the broadest possible
12 exemption that you ever could and just tenaciously
13 stay on it while the circuit court and the plaintiff
14 keep saying no, no, you've got to separate exempt
15 from non-exempt and we say that's not really what
16 Newark stands for, and we say look at Evening News,
17 and we fight it all the way to -- all of this urging
18 to separate exempt from non-exempt.

19 The public body had an obligation from the
20 start that they owe this duty to the people not to
21 care --

22 THE COURT: Mr. Rudd, respectfully, I
23 don't think that issue is teed up for action today.

24 MR. DANIEL RUDD: Okay. Well, I'm just
25 saying, I want -- I'm hopeful we'll get a ruling --

1 THE COURT: Well, and that's --

2 MR. DANIEL RUDD: -- since the City didn't
3 --

4 THE COURT: And I -- This is a little bit
5 like getting pregnant, I think. I don't think that
6 issue is teed up for ruling today and I -- I think I
7 -- if I accept your -- your question -- make a
8 finding of that, I think I've stepped into that.
9 This is an issue that I don't think I can do it a
10 little bit.

11 Okay. Now, what else do you think we
12 should do today, then, that's -- I mean, anything
13 else?

14 MR. DANIEL RUDD: No, Your Honor. If I
15 would be permitted to, you know, file or brief the
16 issue if I want to, you know, notice it for that,
17 then I think that's good and I -- I don't -- If the
18 City is purged of their contempt, then there's -- I
19 didn't want to see anybody spend time in jail,
20 anyway. I think --

21 THE COURT: All right.

22 MR. DANIEL RUDD: I think that's it.

23 THE COURT: Ms. Hall, what else do we need
24 to do today?

25 MS. HALL: Not that I'm trying to raise

1 any issues for Mr. Rudd, but there was one more issue
2 in his motion that I think we should address because
3 I don't want to have to come back -- I don't want
4 there to be any claim that I'm trying to hide
5 anything further.

6 One other claim he made in his motion, if
7 I'm correct, was one of the complaints we had
8 referenced an attachment and I didn't redact that. I
9 mean, he saw that there was an attachment attached to
10 the complaint. I -- I just don't want there to be
11 any claim here, Your Honor, that the City left
12 anything here and I -- I want to address this.
13 That --

14 THE COURT: Is that still an issue, Mr.
15 Rudd?

16 MR. DANIEL RUDD: Yes.

17 MS. HALL: Yes.

18 THE COURT: So what's the item?

19 MS. HALL: So the item -- Do you have --
20 The complaint number is -- I address it -- One
21 second. I just don't want -- So one of them was he
22 was missing the citizen complaint in 2014, Your
23 Honor. That issue was not an issue -- One of his
24 claims was we didn't turn over one of the complaints
25 in 2014, according to the --

1 THE COURT: It was 2014?

2 MS. HALL: Yeah, according to the CALEA
3 records. We don't have one. I pointed the Court's
4 attention to the --

5 THE COURT: Okay.

6 MS. HALL: -- index I provided you wasn't
7 in file so there --

8 THE COURT: So you're saying that there is
9 no 2014 --

10 MS. HALL: There is no 2014.

11 THE COURT: -- dash 11?

12 MS. HALL: Yes, Your Honor.

13 THE COURT: It was a clerical mistake?

14 MS. HALL: I don't know if -- It's just
15 not in the file, yes.

16 THE COURT: Well, let's have the Chief
17 verify that, can we?

18 MS. HALL: Yes, Your Honor.

19 THE COURT: Chief, would you raise your
20 right hand, please? Do you swear or affirm that the
21 testimony you're about to give will be the truth, the
22 whole truth, and nothing but the truth, so help you
23 God?

24 CHIEF JON GALE: I do.
25

1 C H I E F J O N G A L E ,
2 after having been duly administered an oath, was
3 examined and testified as follows:

4 THE COURT: You understand the issue about
5 so-called Exhibit 2014-11?

6 CHIEF JON GALE: I do, Your Honor.

7 THE COURT: Ms. Hall is essentially saying
8 that apparently it never existed?

9 CHIEF JON GALE: Well, it was the previous
10 chief's files. I wasn't --

11 THE COURT: Okay.

12 CHIEF JON GALE: -- a chief at that time,
13 so I had no --

14 THE COURT: Fair enough.

15 CHIEF JON GALE: -- I have no recollection
16 of what would be in there, what wouldn't. But what
17 we produced is what was in the file.

18 THE COURT: Okay. So in -- in response to
19 this litigation -- You're the chief. Right?

20 CHIEF JON GALE: Yes, sir.

21 THE COURT: So I mean, you're probably the
22 guy holding the bucket on all the records, I think.
23 So responding to this litigation, you went back,
24 checked in the files for 2014. You could not find
25 anything you called 2014-11?

1 CHIEF JON GALE: That's correct, Your
2 Honor.

3 THE COURT: All right.

4 MR. DANIEL RUDD: Could we clarify for the
5 record that means anything, not even like a file, a
6 disposition, anything at all?

7 MS. HALL: That's not what --

8 MR. DANIEL RUDD: There's just no file at
9 all?

10 MS. HALL: The -- the Judge has our
11 response for what was in the file.

12 MR. DANIEL RUDD: Because the remaining --
13 the remaining --

14 THE COURT: So -- Well, let me take a
15 look.

16 MS. HALL: There's one -- I think there's
17 one sheet, Your Honor, I produced to you. I don't
18 have my index here.

19 CHIEF JON GALE: The sheet that --

20 (Whereupon, proceeding recessed
21 at 2:31:45 P.M.; proceedings
22 resumed at 2:39:45 P.M..)

23 THE COURT: All right. When I -- when I
24 look at the exhibit -- or the index, excuse me,
25 submitted by Ms. Hall, she identifies 2014-11. She

1 says: Not in the file. She says non-exempt per
2 (unintelligible) May 3, 2018, order, which is good
3 news because that means the City is not contesting
4 it. But her point is that the one-page document in
5 here that says 2014-11 is not a citizen complaint.
6 It's former Chief Shaw's response to somebody who
7 apparently called in a complaint.

8 MS. HALL: Who was a citizen, yes.

9 THE COURT: Who was a citizen.

10 MS. HALL: Yes, Your Honor.

11 THE COURT: All right. So a minute ago,
12 the Chief said it didn't exist. I guess you meant
13 the citizen complaint didn't exist, but this one-page
14 letter obviously does.

15 CHIEF JON GALE: That's correct, Your
16 Honor.

17 THE COURT: Okay. Ms. Hall, let me -- So
18 you've got it in front of you. Right?

19 MS. HALL: No. I was looking at yours.

20 THE COURT: Okay. Well, I'm just
21 wondering is -- that seems sort of innocuous. Is it
22 worth fighting about? I think technically you're
23 right, it's not a -- quote: citizen complaint.

24 MS. HALL: Well, we had an order saying --

25 THE COURT: It recites sort of what

1 apparently the call-in complaint was and how the City
2 handled it. I don't see it implicating any of our
3 concerns here.

4 (Whereupon, inaudible conversation.)

5 MS. HALL: I just exempted it, Your Honor,
6 because the order said that everything other than --

7 THE COURT: Okay.

8 MS. HALL: -- the citizen complaints was,
9 so that's why.

10 THE COURT: I understand your point. It's
11 not technically a citizen complaint. But I think as
12 long as we're here, let's go ahead and deliver it to
13 Mr. Rudd and it completes the --

14 MS. HALL: It's with the -- with the
15 understanding that this isn't opening Pandora's box
16 to getting other stuff on this. You know what I
17 mean? Because if I'm turning this over, could he --
18 could we be back turning over other information?
19 That's my only concern.

20 THE COURT: I understand. I think we'll
21 take our chances on that one. That looks like a
22 pretty quick won-and-done situation.

23 MS. HALL: Okay. Your Honor, I will.

24 THE COURT: You'll get a copy.

25 MS. HALL: This is your copy, so --

1 THE COURT: Okay. So that takes care of
2 that. Ms. Hall, anything else that we need to do
3 today?

4 MS. HALL: Well, there's one more issue he
5 raised and so I think the Court can address it so
6 that we can get clarification. Looks like IA-201408.
7 His -- The initial complaint I gave him references a
8 memo.

9 THE COURT: 201408?

10 MS. HALL: Yep.

11 THE COURT: All right. Just a minute.
12 Okay.

13 MS. HALL: In that citizen complaint, Your
14 Honor, there is referenced an attached --

15 THE COURT: 201408. Right?

16 MS. HALL: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. HALL: There --

19 THE COURT: Actually, the complainant came
20 from another -- a different -- an officer from a
21 different department. Right?

22 MS. HALL: Yeah. Well, it actually came
23 from, yes, an officer --

24 THE COURT: Okay.

25 MS. HALL: -- about the person that's then

1 listed as the complainant. She made the complaint to
2 the chief. I really -- This is my -- my -- She
3 made the initial complaint and so the initial
4 complaint is the document I provided Mr. Rudd as the
5 court ordered. But in investigation, they received
6 the memo that the state -- the officer made a
7 statement to the person making this complainant and
8 that went into the file, but it is referenced in part
9 of the complaint that was typed up, but it wasn't a
10 part of the initial complaint, through my discussions
11 with the City, so it was not provided.

12 I have it here today unredacted if the
13 Court wants to order it is a part of the complaint.
14 Our position was it is not, Your Honor. But I --

15 THE COURT: Well, do I already have it?

16 MS. HALL: You know, you probably do
17 because it would be the statement of -- It's listed
18 on there as statement from sergeant.

19 THE COURT: Okay. Let me see it.

20 MS. HALL: May I approach? And I think
21 this is the final issue, but I just want to make sure
22 we get everything resolved.

23 MR. DANIEL RUDD: At this time, I'd like
24 to state a position on that.

25 THE COURT: I'm sorry?

1 MR. DANIEL RUDD: If there's time, I'd
2 like to also state a position on that particular --
3 If there's time, I would like to state a position on
4 that, as well, that particular record.

5 THE COURT: This one?

6 MR. DANIEL RUDD: Yes.

7 THE COURT: Okay.

8 MR. DANIEL RUDD: What I understand the
9 situation to be is these are two law enforcement
10 officers from separate agencies which the Court
11 specifically said, you know, would be exempted and
12 they did, you know, provide the official form here.
13 But what you essentially have are two chiefs doing a
14 go-between and he's presenting the memo, which is the
15 complaint, and the -- the portion provided here says
16 that it's attached. Typically in a FOIA suit,
17 attachments to e-mails are considered part of the
18 e-mails. That is the true nature of the complaint
19 from the person who originated it.

20 THE COURT: All right.

21 MR. DANIEL RUDD: There was a heated
22 exchange. They probably didn't want these two
23 officers --

24 THE COURT: This goes back to which one,
25 Ms. Hall? 2014 what?

1 MS. HALL: I'm sorry. 08.

2 THE COURT: Thank you. What's been given
3 to Mr. Rudd so far is just the first page?

4 MS. HALL: The initial complaint, yep.

5 THE COURT: All right. Mr. Rudd, what I'm
6 looking at is a memo from an officer from a different
7 department to his chief at that different department.
8 So by definition then it wouldn't be a complaint
9 against the City, so it looks to me like it would be
10 exempt.

11 All right. Ms. Hall, anything else?

12 MS. HALL: That is it, Your Honor --

13 THE COURT: Okay.

14 MS. HALL: -- on his motion, I believe.
15 Right? Those were the last two issues that --

16 Oh, you -- you had some claims that I
17 redacted case numbers. If the case numbers are on a
18 word -- on the documents I provided, it's only
19 because they weren't on the documents when we got
20 them, so I didn't manipulate documents and write case
21 numbers in. One of his allegations in the motion --

22 THE COURT: Well, then let him speak to
23 that.

24 MS. HALL: All right.

25 THE COURT: Are we all done, Mr. Rudd?

1 MR. DANIEL RUDD: I think we're done for
2 today.

3 THE COURT: Okay. All right. Now, let me
4 say a couple of things to wrap things up. I'll do an
5 order about today's events. Now that we have a
6 motion for an order to show cause, we need some order
7 that resolves it. It probably won't get into the
8 details of the exchange of documents we talked about
9 here in the last 20 minutes or so, but it will
10 hopefully be an order which closes, end quote, the
11 file.

12 Now given the way today worked out, it
13 doesn't necessarily dispel some frustration with the
14 way the City has handled it, but the City has
15 complied as of today so I don't think there's a basis
16 for a civil contempt order to coerce future
17 compliance because we have compliance today.

18 As to the criminal contempt issue, we're
19 even further from the finish line there, to stay with
20 a metaphor I used quite awhile ago. Criminal
21 contempt involves all the things that we talked to
22 Ms. Hall about some time ago. Frankly, even the
23 subject matter of this, while a bit frustrating to
24 me, wouldn't give rise to a criminal contempt
25 sanction. Criminal contempt is typically seen in

1 situations of very direct, flagrant noncompliance
2 with the court order, such as a parent who refuses to
3 abide by a court order relating to parenting time
4 with his or her child and things like that, so I
5 don't see -- even if we were to develop this a bit
6 more, that this would be a criminal contempt issue,
7 either.

8 So the Court's concluding its work without
9 any finding of contempt. And that tepid language
10 will probably be used in our order. Now that order
11 will also say, I think, this is a final order which
12 closes the case, although I think we've done -- done
13 that at least once here already.

14 Now Mr. Rudd, I will say to you that if
15 you're seeking sanctions pursuant to a statute, like
16 FOIA, akin to what we do in the civil rights
17 litigation or Consumer Protection Act litigation,
18 those are all things that are raised after the trial,
19 after the judgement. So once I got my order in, you
20 know, I think if your position and -- and legally
21 supported by the law that allows you to do that, then
22 go ahead. But I think a contempt door is closed as
23 of today.

24 Ms. Hall, anything else?

25 MS. HALL: No, Your Honor.

1 THE COURT: Okay. Thank you very much.
2 Have a good weekend.

3 MR. DANIEL RUDD: Thank you, Your Honor.
4 (Whereupon, proceedings concluded
5 at 2:48:30 P.M..)

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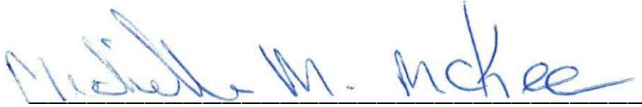
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3 STATE OF MICHIGAN)
4) ss.
5 COUNTY OF MUSKEGON)

6 I, certify that this transcript, consisting of
7 46 pages is a complete, true, and correct transcript of the
8 videotaped proceedings and testimony taken in DANIEL W.
9 RUDD versus CITY OF NORTON SHORES, File No. 17-004334-CZ on
10 June 29, 2018, Videotaped.

11 **Please note proper names and/or case names unknown to
12 this reporter are spelled phonetically and may not be
13 correct.
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18 
19 Michelle M. McKee, CSR-3841
20 Certified Shorthand Reporter
21
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